TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 126

LAURENS FEDERAL SAVINGS AND LOAN ASSOCIATION, PETITIONER,

vs.

SOUTH CAROLINA TAX COMMISSION, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

PETITION FOR CERTIORARI FILED JUNE 3, 1960
CERTIORARI GRANTED OCTOBER 10, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 426

LAURENS FEDERAL SAVINGS AND LOAN ASSOCIATION, PETITIONER,

vs.

SOUTH CAROLINA TAX COMMISSION, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., NOVEMBER 14, 1960

[fol. A]

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

APPEAL FROM LAURENS COUNTY COURT OF COMMON PLEAS

HONORABLE C. BRUCE LITTLEJOHN, PRESIDING JUDGE

LAURENS FEDERAL SAVINGS AND LOAN ASSOCIATION, Appellant,

against

SOUTH CAROLINA TAX COMMISSION and OTIS W. LIVINGSTON, Chairman, JAMES W. CRAIN, JAMES H. SULLIVAN, J. A. CALHOUN, JR., FRANCIS M. PINCKNEY, Constituting the Members of the South Carolina Tax Commission, Respondents.

[fol. 1]

STATEMENT

This is an action instituted by appellant by service of a Summons and Complaint upon the respondents on January 20, 1959, for the recovery of documentary stamp taxes totaling Twenty-two Hundred Seventy Dollars ($2,270.00) paid by appellant under protest on December 31, 1958. The assessment in question was on ten promissory notes executed by appellant within South Carolina in favor of the Federal Home Loan Bank of Greensboro and were given by appellant to the latter institution as evidence of "advances" of credit from the latter to the former.

Appellant is an institution created pursuant to an Act of Congress, known as the Home Owner's Loan Act of 1933 (12 USCA 1464), for the purposes of encouraging thrift and home ownership within the area it serves. The Federal Home Loan Bank of Greensboro, hereinafter referred to as the "Bank," is that institution which represents the Federal Home Loan Bank System in the district in which appellant is located. The Bank was created by Act

(of Congress) of July 22, 1932 (12 USCA 1421 *et seq.*), for the purpose, among others, of directing and controlling the flow of mortgage money to member and non-member direct-lending institutions by way of advances of credit A state-chartered building and loan association or similar institution making home mortgage loans may qualify as a non-member borrower of the Bank upon meeting the conditions set forth in the Federal Home Loan Bank Act, specifically 12 USCA 1424; upon meeting the requirements of a non-member borrower, a state-chartered building and loan association may secure advances of credit from the Federal Home Loan Bank of Greensboro as does appellant, the latter being a member of the Bank by virtue of its in-[fol. 2] corporation under the Home Owners Loan Act of 1933.

The assessment in question was made pursuant to Section 65-688, *Code of Laws of South Carolina, 1952*, which imposes a stamp tax on promissory notes. Appellant seeks a refund of the money paid under the assessment on the ground that the South Carolina tax as applied to the notes in question is illegal, null, void and unconstitutional in that the notes evincing "advances" are specifically exempted from State or local taxation by the Federal Home Loan Bank Act (12 USCA 1433), and that such tax thereby imposes a tax by the State upon an instrumentality of the Federal Government in contravention of the express exemption granted by the Congress.

Answering within due time, respondents alleged that the tax and assessment laid upon the promissory notes involved herein were in all respects legal and that they are specifically authorized by the Home Owner's Loan Act of 1933, 12 USCA 1464(h).

There being no material disagreement as to the facts, appellant, upon notice to respondents, moved before Honorable C. Bruce Littlejohn, Presiding Judge of Court of Common Pleas for Laurens County, on March 9, 1959, for Judgment on the Pleadings. Upon the hearing of the motion, the constitutionality of the several Federal Acts was not questioned by either party; the sole question before the Lower Court was whether or not the tax and assess-

ment in question are unconstitutional and a nullity by virtue of the Acts of Congress. By Order dated June 25, 1959, Judge Littlejohn held that the tax and assessment were legal and not prohibited and that appellant was not entitled to the refund.

[fol. 3] Appellant's Notice of Intention to Appeal to the Supreme Court was served on respondents on July 1, 1959; and the sole question thereby raised is the validity of the South Carolina stamp tax as applied to the notes evincing "advances" from the Bank to appellant.

IN THE COURT OF COMMON PLEAS OF LAURENS COUNTY

COMPLAINT

Plaintiff alleges:

1. That the defendant South Carolina Tax Commission is an agency of the State of South Carolina, charged with the duty and responsibility of assessing and collecting taxes due and owing to the State of South Carolina; that the individual defendants are residents of the State of South Carolina and are the duly appointed and qualified Commissioners of the South Carolina Tax Commission; and that, upon information and belief, this Court has jurisdiction over the parties hereto and the subject-matter of this action.

2. That the plaintiff is a Federal Savings and Loan Association organized and existing under the laws of the United States of America, particularly the Home Owners Loan Act of 1933 (48 Stat. 128, 12 U. S. C. A. 1461 *et seq.*), with its principal place of business in the City of Laurens, County of Laurens, State of South Carolina; that pursuant to the provisions of the Home Owners Loan Act of 1933, the plaintiff is a member of the Federal Home Loan Bank of the district in which it is located; and that under the provisions of the Home Owners Loan Act of 1933 and the Federal Home Loan Bank Act, 475 Stat. 725, 12 U. S. C. A. 1421 *et seq.*, the plaintiff is an agency and arm of the United States of America.

3. That under the provisions of the Home Owners Loan Act of 1933 and the Federal Home Loan Bank Act, the plaintiff is an institution created and existing for the pur-
[fol. 4] pose of encouraging thrift and savings in the community in which it exists, and for the purpose of making available to the people of the community in which it exists low-interest money for the purpose of home ownership.

4. That the purpose of the Federal Home Loan Bank Act was to create an agency to, among other things, control and direct the flow of money throughout the United States of America from areas of plenty to areas of need; and that to facilitate the foregoing, member and certain non-member borrowing institutions of the Federal Home Loan Bank System are authorized to secure advances of credit from the District Federal Home Loan Bank whenever it appears that such advances are needed to meet the needs of a community.

5. That pursuant to the Federal Home Loan Bank Act, there was created and is now existing the Federal Home Loan Bank of Greensboro, North Carolina; that the plaintiff is a member of said Federal Home Loan Bank of Greensboro, as aforesaid; that for the purpose of making mortgage money available in the community which it serves, the plaintiff has secured advances of credit totalling Five Million Six Hundred Seventy-five Thousand Dollars ($5,675,000.00) since August 12, 1953; that each time the plaintiff secured an advance from the Federal Home Loan Bank of Greensboro it executed, as required by said law, at Laurens, South Carolina, its promissory note in writing to the Federal Home Loan Bank of Greensboro; that the amounts advanced since August 12, 1953, are set out on Schedule A, which is hereto attached and made a part of this Complaint.

6. That neither the plaintiff nor the Federal Home Loan Bank of Greensboro has paid, or caused to have been paid, [fol. 5] any documentary stamp tax to the State of South Carolina upon the notes in question for the reasons hereinafter set forth.

7. That in order to effect the ultimate aim of the Federal Home Loan Bank Act and the Home Owners Loan Act of 1933, *i.e.*; providing low-interest money for the purpose of home ownership, the Congress of the United States exempted from taxation by any state, county, municipality or local taxing authority the advances of credit made by any Federal Home Loan Bank to qualified borrowing institutions, of which latter class the plaintiff is a member.

8. That the ability of the plaintiff to secure advances of credit from the Federal Home Loan Bank of Greensboro is a primary and necessary activity directly relating to the distribution and dissemination of low-interest credit to the borrowing public which the plaintiff serves; that the advances made from the Federal Home Loan Bank to the plaintiff are a function of the Government of the United States of America under the terms of the Federal Home Loan Bank Act and the Home Owners Loan Act of 1933, as amended; and that the Documentary Stamp Tax Act of South Carolina, were it applied in the present situation, would effectively prevent the aforesaid agencies of the United States of America from serving the government and the people in the manner intended by the Congress of the United States.

9. That notwithstanding the provisions of the Federal Home Loan Bank Act and Home Owners Loan Act of 1933, the defendant South Carolina Tax Commission, on about July 2, 1958, acting as an agency of the State of South Carolina, served the plaintiff with a "Documentary Violation Report," wherein an assessment in the amount of Two Thousand Two Hundred Seventy and no/100 [fol. 6] ($2,270.00) Dollars was levied against the plaintiff for documentary stamps which had not been affixed to the notes given by this plaintiff to the Federal Home Loan Bank of Greensboro, as aforesaid.

10. That the documentary stamp tax assessment against this plaintiff upon the advances herein set forth is illegal, null and void in that it is an attempt by the State of South Carolina to impose a stamp or excise tax upon an instrumentality or agency of the United States Government

in direct violation of the tax exemption granted this plaintiff and the Federal Home Loan Bank of Greensboro by the Federal Home Loan Bank Act, 12 U. S. C. A. 1421 *et seq.*; and that such tax exemption, as aforesaid, is a valid exercise by the Congress of the United States of its power to regulate and protect governmental agencies created under a constitutional exercise of congressional power.

11. That on or about December 31, 1958, the plaintiff paid the sum of Two Thousand Two Hundred Seventy and no/100 ($2,270.00) Dollars under protest to the defendant South Carolina Tax Commission as provided by Section 65-2661, *Code of Laws of South Carolina, 1952;* and that plaintiff has instituted this action to recover the same as provided by Section 65-2662, *Code of Laws of South Carolina, 1952.*

Wherefore, plaintiff prays:

(a) That the assessment and collection of the tax upon the notes in question be declared illegal, null and void;

(b) That the Court do certify that documentary stamp taxes paid by this plaintiff under protest, totalling Two Thousand Two Hundred Seventy and no/100 ($2,270.00) Dollars, should be refunded to plaintiff; and

[fol. 7] (c) For such other and further relief that may be just and proper.

W. Hummel Harley, Laurens, S. C.; Thomas H. Pope, Robert D. Schumpert, Rembert D. Parler, The Public Square, Newberry, S. C., Attorneys for Plaintiff.

Newberry, South Carolina, January , 1959.

SCHEDULE A TO COMPLAINT

Notes Executed and Delivered by Laurens Federal Savings and Loan Association to the Federal Home Loan Bank of Greensboro

Date	*Amount*
10- 7-57	$ 590,000.00
1- 3-58	570,000.00
7-11-57	650,000.00
4-15-57	680,000.00
1-16-57	710,000.00
10-19-56	740,000.00
7-26-56	760,000.00
8- 2-55	800,000.00
4-16-53	125,000.00
8-12-53	50,000.00
Total	$5,675,000.00

[fol. 8]

IN THE COURT OF COMMON PLEAS OF LAURENS COUNTY

ANSWER

Defendants, answering the complaint herein, would respectfully show to the Court:

1. That they deny each and every allegation of the complaint not hereinafter admitted, qualified or explained.

2. The allegations of paragraphs 1, 3, 5, 6, 9 and 11 of the complaint are admitted.

3. The allegations of paragraph 2 of the complaint are admitted except that defendants allege that plaintiff, being a Federal Savings and Loan Association, may be properly termed an instrumentality of the United States rather than "an agency or arm" of the United States as alleged.

4. Answering paragraph 4 of the complaint, defendants admit that among the purposes of the Federal Home Loan Bank Act was that of creating the means to control and direct the flow of money throughout the United States through the means of member and non-member borrowing

institutions whereby advances of credit can be had to aid in the flow of money.

5. The allegations of paragraphs 7 and 8 of the complaint are denied, defendants alleging that the taxes involved in this action are properly and legally assessed against plaintiff.

6. Answering paragraph 10 of the complaint, the allegations thereof are denied, defendants alleging that the taxes imposed against plaintiff are in all respects just, legal and proper and specifically authorized by the Act of Congress creating Federal Savings and Loan Associations known as the Home Owners Loan Act of 1933, more specifically, 12 U. S. C. A., 1464(h).

[fol. 9] Wherefore, having fully answered the complaint herein, defendants pray that the same be dismissed with costs.

James M. Windham; Assistant Attorney General for South Carolina, Attorney for Defendant, South Carolina Tax Commission.

Columbia, South Carolina, February 9, 1959.

IN THE COURT OF COMMON PLEAS OF LAURENS COUNTY

NOTE RE EXHIBIT

Note of Laurens Federal Savings and Loan Association to the Federal Home Loan Bank of Greensboro, not to be printed but to be handed up to the Court.

IN THE COURT OF COMMON PLEAS OF LAURENS COUNTY

OPINION AND JUDGMENT—June 25, 1959

This matter was heard by me on March 9, 1959, at Laurens, during the regular term of Court, without a jury, there being no disagreement as to the facts. In addition to the oral arguments, each side filed comprehensive written briefs;

The action arose because of the assessment against plaintiff by the South Carolina Tax Commission of documentary stamp taxes on certain notes executed by plaintiff in South Carolina, the notes being given by plaintiff to the Federal Home Loan Bank of Greensboro, North Carolina. The plaintiff conceiving that the taxes so assessed, to wit, the sum of Two Thousand Two Hundred Seventy and no/100 ($2,270.00) Dollars, to have been improperly and unlawfully assessed against it, paid the sum under protest and within the proper time, brought this action to recover the amount so paid.

[fol. 10] The contention of the plaintiff is that the assessment of the taxes in question is not authorized and is improper under the provisions of 12 U. S. C. A. 1433 enacted July 22, 1932 known and cited as the "Federal Home Loan Bank Act". On the part of defendants, it is contended that the taxes were legally and properly assessed and collected. Defendants rely thereabout on the provisions of 12 U. S. C. A. 1464(h) known and cited as the "Home Owners' Loan Act of 1933" enacted June 13, 1933.

The latter enacted Federal statute, 12 U. S. C. A. 1464(h), exempts federal building and loan associations, their franchises, capital, reserves, surplus, loans and income from taxation on the part of the State, territorial, county or municipal taxing authority greater than that imposed by such taxing authority on other similar local mutual or cooperative thrift or home financing institutions.

There is no dispute between the parties concerning the fact that defendants, in imposing the taxes in question, does likewise impose the same kind of taxes and, at the same rate, with respect to notes executed by state chartered building and loan associations and made payable to the Federal Home Loan Bank of Greensboro. The plaintiff contends that any such tax is improper and unauthorized on the part of defendants relying thereabout upon the provisions of the aforementioned Federal statute, 12 U. S. C. A. 1433.

The provisions of 12 U. S. C. A. 1433, relied upon by plaintiff, were enacted, as aforementioned, on July 22, 1932. Thereafter, and in the face of that statute, the

Congress enacted the provisions of 12 U. S. C. A. 1464(h), its enactment being June 13, 1933. It is under this latter Act that Congress provided for the creation of federal [fol. 11] savings and loan associations of which plaintiff is one.

This Federal statute providing for the creation of federal building and loan associations clearly seems to give to such federal building and loan associations exemption from taxation by State or lesser taxing authorities, not only with respect to its loans and franchise but also with respect to its capital, reserves, surplus and income but the exemption thereby provided for is not absolute. Instead the statute permits taxation by the State but no greater than that imposed by such authority on other similar local institutions. It seems to me that is the precise situation here and I so hold.

I hold that if Congress did not intend to permit the taxation by the State and lesser taxing authorities to the extent and within the limits of 12 U. S. C. A. 1464(h), it (the Congress) would not have found it necessary to have passed such Act when there was already on the Federal statute books a statute, 12 U. S. C. A. 1433, which, under the position taken by plaintiff in this matter, would prevent taxation of the notes executed by it here. A legislative body in exacting a law is never presumed to do a useless thing. *Fulghum* v. *Bleakley* (1935), 177 S. C. 286, 181 S. E. 30; *Gaffney* v. *Mallory* (1938), 186 S. C. 337, 195 S. E. 840.

Therefore, I hold that it was the intent of the Congress not to grant to federal building and loan associations such as plaintiff, complete immunity from State taxation but immunity only insofar as provided by the clear terms of 12 U. S. C. A. 1433, and which terms were complied with by defendants in this matter.

The defendants, charged with the official duty of administering certain tax laws, of which that involved herein is one, has, for many years, interpreted the statute to per- [fol. 12] mit the taxation as applied here. It is a generally accepted principle, laid down by the Courts, that when those charged with the execution of a statute have consistently treated it in a certain way, the interpretation by

such administrative body will not be overturned by the Courts without cogent reasons. *Read Phosphate Co.* v. *South Carolina Tax Commission*, 169 S. C. 314, 168 S. E. 722; *Hadden* v. *South Carolina Tax Commission*, 183 S. C. 38, 190 S. E. 249 and others.

The case of *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S. 21, 60 S. Ct. 15, 84 L. Ed. 11, 124 A. L. R. 1236 relied upon by plaintiff in support of their position has not been overlooked by me. That case does not appear to have construed the provisions of subparagraph (h) of 12 U. S. C. A. 1464 but instead appears to have construed the provisions of subsections (c), (e) and (f) of 12 U. S. C. A. 1463. Additionally, there was involved there the matter of a mortgage executed to the Home Owners' Loan Corporation. Here, the instrument taxed was a note executed by a federal building and loan association in South Carolina with the payee, a federal home loan bank.

The Supreme Court of Minnesota, in a case arising subsequent to the decision of the United States Supreme Court in *Pittman* v. *Home Owners' Loan Corporation*, that is *State* v. *Minnesota Federal Savings and Loan Association* (Aug. 14, 1944), 15 N. W. (2d) 568, 218 Minn. 220, went into the provisions of the Home Owners' Loan Act of 1933 (12 U. S. C. A. 1464(h)) and noted that it prohibited the State and other taxing authorities from imposing a tax on federal savings and loan associations where such tax was greater than that imposed by the State on other similar local mutual or cooperative thrift and home financing in- [fol. 13] stitutions. See also *Commissioner of Corporations and Taxation* v. *Flaherty*, 306 Mass. 461, 28 N. E. (2d) 433. In the instant case, the statutory limitation upon the authority of the State to tax is not violated as all similar institutions, state and federal, are taxed the same.

It is, Therefore, Ordered, Adjudged and Decreed that the taxes here involved were properly assessed and collected and that they should be retained by defendants.

And it is so Ordered.

Bruce Littlejohn, Presiding Judge, Eighth Judicial Circuit.

Spartanburg, South Carolina, June 25, 1959.

IN THE COURT OF COMMON PLEAS OF LAURENS COUNTY

EXCEPTIONS

1. His Honor, the Presiding Judge, erred in failing to find as a matter of law that the notes executed by appellant to the Federal Home Loan Bank of Greensboro were exempted from State taxation by Act (of Congress) of July 22, 1932, Federal Home Loan Bank Act, c. 522, sec. 1, 47 Stat. 725, 12 U. S. C. A. 1421 *et seq.*, the error being that advances of credit from the Federal Home Loan Banks to qualified member and non-member institutions are specifically exempted from State taxation by said Act.

2. His Honor, the Presiding Judge, erred in holding that it was the intent of Congress in enacting the Home Owners Loan Act of 1933, 12 U. S. C. A. 1464 *et seq.*, that the "advances" of a Federal Home Loan Bank, as evidenced by the notes in question, could be taxed by the several states, the error being that the Home Owners' [fol. 14] Loan Act of 1933, 12 U. S. C. A. 1464(h), only allows State taxation of federal savings and loan associations in certain, specified areas and the "advances" of a Federal Home Loan Bank are not therein included.

3. His Honor, the Presiding Judge, erred in holding, directly or inferentially, that respondents have for many years interpreted the Federal Home Loan Bank Act or the Home Owners Loan Act of 1933 as allowing the State to tax the "advances" of a Federal Home Loan Bank, the error being that respondents are not, as a matter of law, charged with the responsibility of administering said Acts, and that there is nothing in the record to substantiate such a finding.

4. His Honor, the Presiding Judge, erred in holding, directly or inferentially, that respondents' interpretation of Section 65-688, *Code of Laws of South Carolina, 1952*, as allowing the taxation of "advances" of a Federal Home Loan Bank by the State should be given weight in determining the question of the legality of the tax in question, the error being that respondents' interpretation of a State statute is not relevant to a proper construction of the Federal Acts.

5. His Honor, the Presiding Judge, erred in holding, directly or inferentially, that the notes in question are subject to taxation because the same notes executed by a state-chartered building and loan association would be subject to State taxation, the error being that a state-chartered building and loan or similar institution which secures advances of credit from the Federal Home Loan Bank System is exempted by the Federal Home Loan Bank Act, specifically 12 U. S. C. A. 1433, insofar as the notes representing the "advances" are concerned.

[fol. 15]

IN THE COURT OF COMMON PLEAS OF LAURENS COUNTY

AGREEMENT AS TO RECORD—September 12, 1958

It is agreed that when printed, the following Record shall constitute the Case for Appeal to be filed in the Supreme Court and that a signed copy of the foregoing when printed, shall constitute the Return to be filed with the Clerk of Court of Common Pleas for Laurens County.

W. Hummel Harley, Laurens, S. C.; Thomas H. Pope, Robert D. Schumpert, Rembert D. Parler, Newberry, S. C., Attorneys for Appellant.

James M. Windham, Columbia, S. C., Attorney for Respondents.

September 12, 1959.

[fol. 16] Clerk's Certificates to foregoing transcript (omitted in printing).

[fol. 18]

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

[Title omitted]

PETITION FOR REHEARING—Filed February 26, 1960

The undersigned attorneys for appellant respectfully petition this Honorable Court for a rehearing of the above entitled cause for the following reason:

That this Honorable Court misapprehended the holding of the U. S. Supreme Court in the cases of *Pittman* v. *Home Owners' Loan Corporation*, 308 U. S. 21, 60 S. Ct. 15, 84 L. Ed. 11, and *Federal Land Bank* v. *Crosland*, 261 U. S. 374, 43 S. Ct. 385, 67 L. Ed. 703, in that it failed to construe said opinions as holding that it matters not upon whom the State attempts to place the burden of a State Tax in regard to notes and/or mortgages given by or to the Federal Home Loan Bank of Greensboro, N. C., or similar federal agencies.

The undersigned attorneys respectfully represent that there is no specific property involved in this cause which would be affected by a stay of the remittitur.

Respectfully submitted,

W. Hummel Harley, Laurens, South Carolina; Thomas H. Pope, Robert D. Schumpert, Rembert D. Parler, Newberry, South Carolina, Attorneys for Petitioner-Appellant.

Newberry, South Carolina, February 15, 1960.

[fol. 19] CERTIFICATE

I, the undersigned attorney, do hereby certify that I am duly admitted to practice law before the Highest Court of the State of South Carolina, that I have no interest in the above-entitled cause, that I have read the within ground for a petition for rehearing in said cause, in connection with the record therein, and that I believe there is merit in the ground presented.

R. Aubrey Harley, Attorney at Law, Newberry, S. C.

Newberry, S. C., February 15, 1960.

[fol. 20] [File endorsement omitted]

Petition Denied.

T. H. Stukes, C.J., C. A. Taylor, A.J., G. Dewey Oxner, A.J., Lionel K. Legge, A.J., Joseph R. Moss, A.J.

[fol. 21]

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

LAURENS FEDERAL SAVINGS & LOAN ASSOCIATION, Appellant,

v.

SOUTH CAROLINA TAX COMMISSION and OTIS W. LIVINGSTON, Chairman, JAMES W. CRAIN, JAMES H. SULLIVAN, J. A. CALHOUN, JR., FRANCIS M. PINCKNEY, Constituting the Members of the S. C. Tax Commission, Respondents.

Appeal From Laurens County
C. Bruce Littlejohn, Judge

Case No. 4535

Opinion No. 17609

AFFIRMED

• • • • • • •

OPINION—Filed February 5, 1960

Moss, A. J.: This action was brought under the provisions of Sections 65-2661-2 of the 1952 Code of Laws of South Carolina by the appellant, Laurens Federal Savings and Loan Association, against the South Carolina Tax Commission, to recover documentary stamp taxes in the amount of $2,270.00, which appellant paid under protest. The assessment for documentary stamps against the appellant was on ten promissory notes executed by it to

the Federal Home Loan Bank of Greensboro, North Carolina, such assessment being made pursuant to Section 65-688 of the 1952 Code of Laws of South Carolina, which imposes on promissory notes a stamp tax of 4¢ on each $100.00, or fractional part thereof.

The appellant is a Federal Savings and Loan Association, chartered pursuant to the provisions of an Act of Congress known as the "Home Owners' Loan Act of 1933", enacted into law June 13, 1933, as amended, 12 U. S. C. A. 1464, for the purpose of encouraging thrift and home ownership within the area it serves. The Federal Home Loan Bank of Greensboro, North Carolina, was created under an Act of Congress, known as the "Federal Home Loan Bank Act", enacted July 22, 1932, 12 U. S. C. A. 1421, et seq., for the purpose, *inter alia*, of directing and controlling the flow of mortgage money to member and non-member direct-lending institutions by way of advances of credit. A state-chartered building and loan association or similar institution making home mortgage loans may qualify as a non-member borrower of the Bank upon meeting the conditions set forth in the Federal Home Loan Bank Act, specifically 12 U. S. C. A. 1424; upon meeting the requirements of a non-member borrower; a state-chartered building and loan association may secure advances of credit from the Federal Home Loan Bank of Greensboro as does appellant, the latter being a member of the Bank by virtue of its incorporation under the Home Owners' Loan Act of 1933.

It is provided in 12 U. S. C. A. 1430 (a) that the Federal Home Loan Bank is authorized to make advances to its members upon the security of home mortgages, and in Section (c) of said Statute, that such advances shall be made upon the note or obligation of the member or non-member borrower. It was upon ten such notes that the respondent imposed a documentary stamp tax as provided by Section 65-688 of the 1952 Code of Laws of South Carolina. The appellant paid the documentary stamp taxes so assessed under protest and timely brought this action to recover such.

In the lower Court the appellant contended that the respondent could not legally assess and collect the stamp taxes

involved in this action because of the provisions of 12 U. S. C. A. 1433, which operates to preclude the taxation of the promissory notes executed by the appellant. The respondent contends that the provisions of 12 U. S. C. A. 1464 (h) specifically authorize the taxes.

[fol. 22] There being no material disagreement as to the facts, the appellant moved before the Honorable C. Bruce Littlejohn, the Presiding Judge, for judgment on the pleadings. Judge Littlejohn held that the stamp tax assessment as made by the respondent was legal and the appellant was not entitled to the claimed refund. This appeal followed.

The question to be determined upon this appeal is whether the respondent, by virtue of the provisions of 12 U. S. C. A. 1464 (h), can legally subject the promissory notes given by the appellant to the Federal Home Loan Bank of Greensboro, North Carolina, to South Carolina documentary stamps, or is it precluded from so doing by virtue of the provisions of 12 U. S. C. A. 1433.

The complaint in this action alleges that the promissory notes of the appellant to the Federal Home Loan Bank of Greensboro, North Carolina, were executed at Laurens, South Carolina, the place of business of the appellant. It was held in the case of Graniteville Mfg. Co. v. Query, et al., 44 F. (2d) 64, affirmed on appeal to the United States Supreme Court, 283 U. S. 376, 51 S. Ct. 515, 75 L. Ed. 1126, that South Carolina may validly impose a stamp tax upon promissory notes executed within the State though payable to banks at their places of business outside the State. Therefore, it follows that unless there is an appropriate exemption applying to the notes executed by the appellant, they should bear South Carolina documentary stamps as is fixed and required by Section 65-688 of the 1952 Code of Laws of South Carolina. There is no exemption under our documentary tax statute which would excuse the appellant from affixing the required stamps to its notes, even though such were executed to the Federal Home Loan Bank of Greensboro, North Carolina.

This Court has held that constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayer

claiming an exemption, and he must, in order to be entitled to such exemption, clearly bring himself within the exemption on which he relies. Textile Hall Corp. v. Hill, 215 S. C. 262, 54 S. E. (2d) 809; Arkwright Mills v. Murph, 219 S. C. 438, 65 S. E. (2d) 665; and M. B. Kahn Construction Co. v. Crain, et al., 222 S. C. 17, 71 S. E. (2d) 503.

There is no dispute between the parties to this action concerning the fact that the respondent, in imposing the documentary stamp taxes in question, does likewise impose the same kind of taxes and, at the same rate, with respect to notes executed by State chartered Building and Loan Associations to the Federal Home Loan Bank of Greensboro, North Carolina. The appellant contends, however, that any such tax is improper and unauthorized on the part of the respondent and relies upon the provisions of the aforementioned Federal Statute, 12 U. S. C. A. 1433. This statute was enacted on July 22, 1932, as a part of the Act creating the Federal Home Loan Bank, and with reference to exemptions from taxation, provides:

> "• • • The bank, including its franchise, its capital, reserves, and surplus, its advances, and its income, shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that any real property of the bank shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. • • •"

It is clear from the foregoing statute that the immunity provided therein from taxation applies only to the Federal Home Loan Bank. The respondent here has not sought to place any documentary tax upon the Federal Home Loan Bank but such has been assessed against the appellant. If the respondent had attempted to place a documentary tax upon some obligation issued by the Federal Home Loan Bank, then the above quoted statute would be applicable and such bank entitled to the immunity therein provided.

The appellant cites and relies upon the case of Pittman v. Home Owners' Loan Corporation, 308 U. S. 21, 60 S. Ct.

15, 84 L. Ed. 11, where it was held that a tax imposed by a State statute upon every mortgage recorded or offered for record at the rate of 10¢ for every $100.00 of the principal amount of the debt secured, was not merely a fee for the privilege of recording the mortgage but was a tax on the mortgage itself, so as to be inapplicable to a mortgage offered for record by the Home Owners' Loan Corporation, [fol. 23] it being provided by the Act establishing such corporation, that its loan should be exempt from state and municipal taxation. We should emphasize that the mortgage sought to be taxed in the Pittman case was offered for record by the Home Owners' Loan Corporation. It is readily apparent that the rule there announced is not applicable under the factual situation here. We should also point out in the Pittman case that the tax was sought to be imposed against the corporation which was immune from such tax by reason of the Federal Statute.

The appellant asserts that a Federal Savings & Loan Association is an instrumentality or agency of the United States, and, as such, is exempt from State taxation. In the case of Capitol Building & Loan Association, et al. v. Kansas Commission of Labor and Industry, et al., 148 Kan. 446, 83 P. (2d) 106, 118 A. L. R. 1212, an action was brought by a Building & Loan Association organized under Kansas law to determine whether it was exempt as a federal instrumentality from making contributions to the State Unemployment Compensation Fund. It was contended by the plaintiff that by virtue of their ownership of stock in the Federal Home Loan Bank and their consequent membership in its corporate entity, they themselves are federal instrumentalities and are exempt from making contributions to the Unemployment Compensation Fund. The Kansas Supreme Court, in rejecting the claim of the plaintiff, and holding the Building & Loan Association liable for the Unemployment Compensation Fund taxes, said:

> "The term 'Federal instrumentality' is not defined in our statutes, but it is a common one in the law books. An instrumentality is anything used as a means or agency. 32 C. J. 947. Therefore a Federal instrumentality is a means or agency used by the Federal government. In the law books the terms 'Federal

agency' and 'Federal instrumentality' are used interchangeably. Thus in 2 Cooley on Taxation (4th ed.) 1300, it is said:

"'A corporation cannot escape state taxation merely because it was created by the Federal government, nor because it was subsidized by it, nor because it is employed by the Federal government, wholly or in part, unless it is really an agency or instrumentality for the exercise of the constitutional powers of the United States.'"

We quote further from the last cited case, the following:

"On the other hand the supreme court has also said:

"'It is apparent that not every person who uses his property or derives a profit, in his dealings with the government, may clothe himself with immunity from taxation on the theory that either he or his property is an instrumentality of government within the meaning of the (immunity) rule.' Metcalf & Eddy v. Mitchell, 269 U. S. 514, 522, 523, 46 S. Ct. 172, 174, 70 L. Ed. 384.

"In the same case it was said:

"'Just what instrumentalities of either a state or the Federal government are exempt from taxation by the other cannot be stated in terms of universal application. . . .

"'As cases arise, lying between the two extremes, it becomes necessary to draw the line which separates those activities having some relation to government, which are nevertheless subject to taxation, from those which are immune. Experience has shown that there is no formula by which that line may be plotted with precision in advance. But recourse may be had to the reason upon which the rule rests, and which must be the guiding principle to control its operation.'"

We conclude that the appellant is not exempt from the documentary stamp taxes by reason of the provisions of the Federal Statute, 12 U. S. C. A. 1433, nor is it such a

Federal instrumentality or agency entitling it to exemption from the taxes herein assessed by the respondent.

The appellant was organized under the provisions of the "Home Owners' Loan Act of 1933", enacted June 13, 1933, 12 U. S. C. A. 1464. It is provided in 12 U. S. C. A. 1464 (h) that:

> [fol. 24] "Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States, and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions."

The foregoing statute gives to a Federal Savings & Loan Association exemption from taxation by the state, or lesser taxing authority, with respect to its franchise, capital, reserves, surplus, loans and income, but permit taxation of such association by the State, or a lesser taxing authority, no greater than that imposed by such authority on other similar institutions.

It seems clear to us that if Congress did not intend to permit the taxation by the State and the lesser taxing authority to the extent and within the limits of 12 U. S. C. A. 1464 (h), it would not have found it necessary to have passed such an Act when there was already in existence the Federal Statute, 12 U. S. C. A. 1433, which, under the position taken by the appellant, would prevent taxation of the notes executed by it.

The purpose of the restrictive provision contained in 12 U. S. C. A. 1464 (h), providing that a Federal Savings and Loan Association shall not be taxed greater than that imposed on similar local institutions, was to prevent any unfair discrimination against said Federal Savings and

Loan Association in matters of State taxation in favor of local institutions carrying on a similar business. Accordingly, a Federal Savings and Loan Association can be taxed only to the same extent that local Building and Loan Associations are taxed. Cf. Section 8-610, of the 1952 Code of Laws of South Carolina.

In 84 C. J. S., Taxation, Section 157, at page 314, it is said:

> "In view of the statute relating to federal savings and loan associations and providing that no state, territorial, county, municipal, or local taxing authority shall impose any tax on such associations, or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or co-operative thrift and home financing institutions, 12 U. S. C. A., para. 1464 (h), federal associations are taxable to the same extent as state institutions. Such an association is a financial institution within the meaning of a state statute relating to the taxation of financial, mercantile, manufacturing, and business corporations."

In the case of State v. Minnesota Federal Savings and Loan Ass'n, 218 Minn. 220, 15 N. W. (2d) 568, it was held that a Savings and Loan Association, incorporated under 12 U. S. C. A. 1464 (a), is an instrumentality of the United States and free from taxation except to the extent permitted by Congress. It was also held that allowing State Building and Loan Associations credit against their net taxable income for interest and dividends paid to their members was void as discriminating against Federal Savings and Loan Associations, in violation of the tax uniformity provision of the Minnesota Constitution and 12 U. S. C. A. 1464 (h), which prohibits a State from imposing higher taxes on such Federal Associations than on other similar local mutual or cooperative thrift and home financing institutions.

In the case of First Federal Savings and Loan Ass'n of Altadena v. Johnson, 49 Cal. App. (2d) 465, 122 P. (2d) 84, it was held that a Federal Savings and Loan Associa-

tion was not exempt from State franchise taxes because it did not hold a franchise from the State, and that in view of the provisions of 12 U. S. C. A. 1464 (h), the State may impose on a Federal Savings and Loan Association a franchise tax computed on the basis of annual net income derived from investments of both local and federal funds, where the tax is not greater than that levied on a similar State institution.

[fol. 25] We think that the provisions of 12 U. S. C. A. 1464 (h) are clear, unambiguous and unequivocal in permitting the imposition of a documentary stamp tax on promissory notes executed by Federal Savings and Loan Associations when such is no greater than that imposed by the respondent on similar local Building and Loan Associations. We think that by the very terms of the statute, Congress has permitted to the States and the lesser taxing authority the specific right to tax a Federal Savings and Loan Association, but to no greater extent, however, than that with respect to similar local institutions.

We conclude that the respondent, by virtue of the provisions of 12 U. S. C. A. 1464 (h), has properly assessed and collected the South Carolina documentary stamp taxes here involved, the Congress having expressly granted to the taxing authority the right to impose and collect such.

The exceptions of the appellant are overruled and the judgment of the lower Court is affirmed.

Stukes, C. J., Taylor, Oxner and Legge, JJ., concur.

[fol. 26]

SUPREME COURT OF THE UNITED STATES

October Term, 1959

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—May 2, 1960

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including June 4th, 1960.

Earl Warren, Chief Justice of the United States.

Dated this 2nd day of May, 1960.

[fol. 27]

SUPREME COURT OF THE UNITED STATES

No. 126, October Term, 1960

LAURENS FEDERAL SAVINGS AND LOAN ASSOCIATION,
Petitioner,

vs.

SOUTH CAROLINA TAX COMMISSION, et al.

ORDER ALLOWING CERTIORARI—October 10, 1960

The petition herein for a writ of certiorari to the Supreme Court of the State of South Carolina is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 28]

SUPREME COURT OF THE UNITED STATES

October Term, 1960

No. 126

[Title omitted]

On Writ of Certiorari to the Supreme Court of South Carolina

STIPULATION AS TO PARTS OF THE RECORD TO BE PRINTED —Filed October 31, 1960

It is hereby stipulated and agreed by and between counsel for the respective parties to the above-entitled cause that: the printed record shall consist of the following:

1. The entire record as printed for the use of the Supreme Court of South Carolina, copies of which have already been furnished to the Clerk of the Supreme Court of the United States;
2. The opinion and judgment of the Supreme Court of South Carolina (printed as Appendix A to the Petition for Certiorari);
3. The petition for rehearing in, and denial thereof by, the Supreme Court of South Carolina (printed as Appendix B to the Petition for Certiorari);
4. Order Extending Time to File Petition for Writ of Certiorari (printed as Appendix C to the Petition for Certiorari);
5. Order Granting Writ of Certiorari; and
6. This stipulation.

Frank K. Sloan, Ernest L. Folk, III, Counsel for Petitioner.

James M. Windham, Counsel for Respondent.

October 25, 1960.